

F.M.S. REPORTS.

[APPELLATE CIVIL JURISDICTION]

MILLS, J.

January 7, 1933.

VELLUPILLAY Appellant.
vs.

THE REGISTRAR OF TITLES,

NEGRI SEMBILAN Respondent.
[NEGRI SEMBILAN CIVIL APPEAL No. 20 of 1932]*Registration of titles—charge—issue document of title with chargee—second charge—presentation of—powers of Registrar to require delivery of issue document of title—Land Code, 1926, ss. 87 (i), 91, 230 (b), 237, 240.*

The proprietor of certain lands executed a charge in favour of a bank. The relevant issue document of title was in the bank's possession. Subsequently the proprietor charged the lands in the appellant's favour. On presentation of the Memorandum of Charge, the appellant requested the Registrar of Titles to call upon the Bank to deliver the issue document of title, in order that a memorial of the second charge might be made thereon. The Registrar refused to comply with the request and rejected the Memorandum of Charge on the ground that the issue document of title had not been presented. Against the Registrar's decision, the appellant appealed to the Court under Section 237 of the Land Code.

Held, that the Registrar has power under Section 230 (b) to require the Bank to produce the issue document of title.

Jeff for the Appellant.

MILLS, J.—The facts in this case are as follows:—

The proprietor of certain lands executed a charge in favour of a Bank: the Bank retained the issue document of title. At a later date the proprietor executed a second charge in favour of Vellupillay, the present appellant.

When presenting the memorandum of charge under section 129 of "The Land Code, 1926," Vellupillay requested the Registrar of Titles to require the Bank under section 230 (b) of the Code to deliver the issue document of title, in order that a memorial of the second charge might be made thereon, as laid down in section 91.

The Registrar refused to comply with the request, on the ground that he had no jurisdiction: and as the issue document of title had not been presented, the Registrar rejected the memorandum of charge under section 87 (i).

Vellupillay being dissatisfied with the Registrar's decision, now applies to the Court under section 237.

The question for determination is whether or not the Registrar has power under section 230 (b) to require the Bank to deliver the issue document of title.

The Registrar formed the opinion that he had no such power: he considered that in section 230, paragraph (b) must be read in connection with paragraph (e), and that the power of supplying memorials was limited to the supplying

of memorials which had in error been omitted to be made on the issue document of title.

I am unable to find any indication that the legislature intended paragraph (b) to be read in connection with paragraph (e), and I therefore hold that the meaning of paragraph (b) ought to be ascertained by considering the provisions of that paragraph alone.

The opening sentence of that paragraph gives the Registrar an unqualified power of calling for the issue document of title. It is argued, however, that this power must be regarded as limited by the concluding sentence of the paragraph, "and the proper registering authority after inspecting the same and where necessary correcting any error or supplying any memorial required to be made thereon shall return the same to the person who delivered it."

In my judgment, the unqualified power is not to be construed as limited by the provisions of an instruction directing the Registrar what to do with the document when he has finished with it.

Even if it were to be so limited, I can find no sufficient reason for holding that the memorials to be supplied must be restricted to memorials in error omitted to be made on the document. If it were the intention of the Enactment that the memorials to be supplied must be so restricted, I think the Enactment would have contained the words "in error omitted to be made thereon," as indeed paragraph (e) does contain these words.

I hold that the Registrar has power under section 230 (b) to require the Bank to produce the issue document of title in order that the memorial of the second charge may be made thereon.

The appeal is allowed.

By virtue of the powers conferred on the Court by section 240, I order the Registrar to require the Bank, under section 230 (b), to deliver the issue document of title, and I order the Registrar to register the second charge in question as from the 30th day of September, 1932, and to make the proper memorial on the issue document of title.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

December 21, 1937.

PUBLIC PROSECUTOR vs. LEE YEE HENG.
[SELANGOR MAGISTRATE'S CRIMINAL APPEAL
No. 73 of 1937]*Criminal Procedure Code, s. 173 (g)—submitting no case to meet—duty of Magistrate.*

It is contrary to the provisions of the Criminal Procedure Code for a Magistrate, if at the close of the Prosecution case he in fact considers that only a highly sus-

picious case has been made out against the accused, to proceed to call upon the defence in the possible hope that the defence, if one is made, may resolve his doubts. If the Magistrate feels in any way doubtful and in need of consideration at the close of the prosecution case, the correct procedure would be for him, after hearing the submission and argument thereon of counsel, to have taken time to consider and decide whether or not a case has been made out against the accused.

M. C. Hay—Deputy Legal Adviser for Appellant.

Toswell, for Respondent.

Cur. Ad. Vult.

CUSSEN, J.—In this case the accused—the clerk-in-charge of the Government Chandu Shop at Ampang—was charged with the abetment of possession of chandu exceeding two tahils by one Chen Tam Choy, an offence under sections 13 (i) (c) and 36 of the Opium and Chandu Enactment (Cap.134) punishable under section 13 (ii).

At the close of the case for the prosecution counsel for the accused submitted that there was no case to meet.

The learned Magistrate called upon the defence.

Section 173 (f) of the Criminal Procedure Code states:—

“(f) If, upon taking all the evidence here-inbefore referred to the Court finds that no case against the accused has been made out which if unrebutted would warrant his conviction the Court *shall* record an order of acquittal.”

Therefore at the close of the Prosecution evidence, when the Magistrate rejected the submission of counsel and called upon the defence, it must be taken that the Magistrate considered that a case had been made out against the accused which, if unrebutted, warranted his conviction.

At that stage, when the Magistrate called upon the accused to enter upon his defence, the record shows that thereupon counsel for the accused stated that the accused did not wish to give evidence.

In view of the defence being called upon the Magistrate must then, under section 173 (h) of the Criminal Procedure Code, have been of the opinion “that there were grounds for presuming that the accused had committed the offence charged.”

When no defence was offered it might have been expected that the learned Magistrate would there and then have convicted the accused.

However, judgment was reserved until the following day.

The next day counsel for the accused asked the Magistrate that the accused be asked to state himself whether he wished to make any defence. The “usual warning was given to the accused and he states he does not wish to make a statement.”

The Court thereupon recorded its finding

that “from the evidence produced before the Court, I find that it is not strong enough to record a conviction although it is highly suspicious against the accused. I accordingly acquit the accused.”

Now in the first place it may be that, although at the close of the Prosecution case, the Magistrate was of the opinion that a case, as required by section 173 (f) of the Criminal Procedure Code, had been made out and so rightly called upon the defence, yet having reserved judgment until the next day he on further consideration concluded that his first opinion was wrong, and decided that a case under section 173 (f) had not been made out. That, though perhaps unusual, is in no way improper, although the correct procedure, if the Magistrate felt in any way doubtful and in need of consideration at the close of the Prosecution case, was, after hearing the submission and argument thereon of Counsel, to have then taken time to consider and decide whether or not a case had been made out against the accused.

But, on the next day of the trial, it must be considered that the Magistrate had, on consideration overnight, decided that there was not a case, and that the evidence of the Prosecution did not establish anything more than a case of grave suspicion. But if that was so he should have so recorded it and acquitted the accused, without again calling upon him to answer the charge.

It is difficult to understand the logic or lack of logic which dictated these proceedings.

But, while I do not say that it is what happened, although what I have recounted above of the proceedings might very well suggest it, I would like to state that it is wrong and contrary to the provisions of the Criminal Procedure Code for a Magistrate, if at the close of the Prosecution case he in fact considers that only a highly suspicious case has been made out against the accused, to proceed to call upon the defence in the possible hope that the defence, if one is made, may resolve his doubts.

Without examining in detail the evidence given for the Prosecution in this case I have no doubt whatever that this was a case which strongly warranted a conviction if unrebutted and that the accused should have been convicted. There is no suggestion that any of the evidence given by the Prosecution witnesses was not believed by the Court. In his grounds of judgment what the learned Magistrate finds is that the evidence, even if fully accepted, is not sufficient to establish more than a case of suspicion. Since, therefore, the credibility of the witnesses is not in question, which is peculiarly a matter for the trial Court, I am free to reverse the decision of the Lower Court.

Appeal allowed.